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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 **United States of America,**
10 **Plaintiff,**

11 **vs.**

12 **Sandra Cruz Noriega,**
13 **Defendant.**

CR 11-2729-12-TUC-DCB

**Government Sentencing
Memorandum**

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15 Now comes the United States of America, by and through its undersigned
16 attorneys, and files its Sentencing Memorandum.

17 **I. Overview**

18 The government concurs with the Probation Officer's narrative of the offense.
19 However, in understanding the overall criminal conduct in this case, the government
20 would group the marijuana trafficking activities of the defendant into the two groups of
21 conspiracies charged in Counts 2 and 5 of the Superseding Indictment. The older of the
22 two conspiracies involves the years-long trafficking arrangement between lead defendant
23 Marcos Cruz and his organization (to include defendant Noriega) and the Nebraska-based
24 drug trafficking organization headed by Shannon Williams. The older conspiracy
25 encompasses Counts 5 – 8 of the Superseding Indictment. This includes the marijuana
26 conspiracy, as well as the false documents conspiracy utilized by members of the
27 marijuana conspiracy to facilitate the offense and a money laundering conspiracy
28 involving the defendant. The older conspiracy involves the conduct covered in

1 paragraphs 5 – 8 of the PSR, along with paragraphs 16, 25, 27, 29, and 30, which spell
2 out defendant Noriega's personal involvement.

3 The "newer" conspiracy, covered in Counts 2 – 4 of the Superseding Indictment,
4 involves an FBI-led "sting" operation intended to firm up the evidence against the
5 various defendants. This conspiracy did not involve defendant Noriega, as she had
6 already been arrested by that time on her outstanding warrant of out the Western District
7 of Texas.

8 **II. Defendant's Conduct**

9 The PSR, ¶¶ 16, 25, 27, 29, and 30, details the defendant's involvement in the
10 marijuana conspiracy and the money laundering efforts. The defendant, however, pled
11 guilty to somewhat different conduct. The government submits that both should be
12 considered in fashioning an appropriate sentence. The defendant pled guilty to a
13 misprision of a felony related to her involvement in the fake documents scheme detailed
14 above, which in turn was part of the underlying drug conspiracy. The defendant also pled
15 guilty to possessing another's means of identification, related to her possession of a
16 fraudulently obtained, but real driver's license in another's name with the intent to avoid
17 arrest for her warrant from the Western District of Texas.

18 **III. Guideline and Legal Sentencing Issues**

19 The government did not file for any enhancement against the defendant pursuant
20 to 18 U.S.C. §3147. As a result, the defendant's maximum exposure is limited to those
21 offenses to which she pled guilty. In short, the defendant's maximum term of
22 imprisonment is three years and five years for the misprision and false documents
23 charges, respectively. There is not a ten year maximum because the government did not
24 allege the §3147 enhancement.

25 While it is clear that the PSR applied relevant conduct to reach the guideline
26 numbers in this case, the original intent of the parties was for guideline numbers that
27 reflected the defendant's conduct in the information. With the counts grouping (and the
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1 false document being the lower guideline number), the misprision offense would have
2 “capped” the offense conduct at a level 19. With the obstruction guideline enhancement,
3 ¶42, and acceptance of responsibility canceling each other out (+3 for obstruction versus
4 -3 for acceptance), this guideline range would have been a level 19 and CHC II, resulting
5 in a guideline range of 33 – 41 months. The government had intended to file an upward
6 departure motion, pursuant to U.S.S.G., §5K2.21. However, in light of the relevant
7 conduct in the PSR and the fact that neither party has filed a formal objection to these
8 calculations, the issue is somewhat moot. This paragraph is intended to provide some
9 explanation to how the parties reached the plea range and is not intended to be formal
10 objection to the guideline calculations.

11 **III. Sentencing Recommendation**

12 The government recommends the high end of the plea range, i.e. a sentence of 48
13 months. The defendant became involved in the instant offense while on absconder status
14 from her case in El Paso. Contrary to her claims that she was not involved in the drug
15 conspiracy charged in the superseding indictment, there are a number of parties in the
16 PSR that implicate her, as mentioned above. While she may have pled only to offenses
17 related to the fake document she possessed and failing to report her knowledge of the
18 conspiracy, it is clear that her involvement extended beyond that.

19 The obstruction component to this case is particularly telling. While the defendant
20 claims to have been kidnapped for several years, there is no corroboration for these
21 claims. When the defendant did return, she participated in the drug conspiracy and
22 fraudulently obtained a new identity to hide her return.

23 To the extent that the Court wants to consider the defendant’s mental health
24 history, the government submits that issue, along with acceptance of responsibility, is
25 sufficient justification to reach below the five year maximum for this offense and
26 sentence her to a term of forty-eight months imprisonment.

27 As the defendant committed these offenses while in absconder status, the
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1 government requests that this sentence run consecutive to her term of imprisonment in
2 case EP-95CR-334-FM2. The combination of the five years she is serving on that case
3 with another four years for the instant case provides an adequate punishment for her
4 conduct.

5 Lastly, the government suggests that the letters of recommendation provided by
6 the defendant's family members be viewed somewhat skeptically. As noted in the PSR,
7 several of the defendant's immediate family, to include her son, daughter, brother, and
8 cousin, were charged in this case. Indeed, one letter of recommendation comes from lead
9 defendant Marcos Cruz, who states that his sister "has never been involved in any illegal
10 drug trafficking." That is simply not true, as evidenced by her conviction in El Paso and
11 her involvement in the instant offense.

12 Respectfully submitted this 26th day of February, 2013.

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14 JOHN S. LEONARDO
15 United States Attorney
16 District of Arizona

17 *s/Robert A. Fellrath*

18 ROBERT A. FELLRATH
19 Assistant U.S. Attorney

20 Copy of the foregoing served electronically or by
21 other means this 26th day of February, 2013, to:

22 David Basham, Esq.
23 *Counsel for Defendant Noriega*
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